CF0000059342

(2)

Division Bench (Criminal)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

Criminal Appeal No. 729 /1991

APPELLANTS 1. Daulatram son of Bhukiram Satnami, aged 43 years, resident of village Tengnapali, P.S. Sarangarh, District Raigarh (MP)

2. Mahesh Ram, son of Daulat Ram, aged about 20 years, resident of village Tengnapali, P.S. Sarangarh, District Raigarh (MP)

-: Versus :-

RESPONDENTS State of Madhya Pradesh, Through Police Station Sarangarh, District Raigarh.

Conviction : Under Section 302/34 I.P.C.

Sentence : Imprisonment for life.

CRIMINAL APPEAL UNDER SECTION 374 OF THE CODE OF CRIMINAL PROCEDURE.

HIGH COURT OF CHHATTISGARH : BILASPUR

CRIMINAL APPEAL NO. 729 OF 1991

Daulatram and another

Vs.

The State of Madhya Pradesh
(now State of Chhattisgarh)

Judgment for consideration

Sd/-
Dilip Raosaheb Deshmukh
Judge

Hon'ble Shri Justice Fakhruddin

Sd/-
Fakhruddin
Judge

Post for 16-09-2005

Sd/-

HIGH COURT OF CHHATTISGARH : BILASPUR

Criminal Appeal No. 729 OF 1991

Daulatram and another.

Vs.

The State of Madhya Pradesh (now State of Chhattisgarh)

Coram :- Hon'ble Shri Fakhruddin, J &
Hon'ble Shri Dilip Raosaheb Deshmukh, J

Shri Vivek Ranjan Tiwari, counsel for the appellants.

Shri Ashish Shukla, G.A./Addl. Public Prosecutor for the State.

J U D G M E N T
(Delivered on 26.09. 2005)

Per Dilip Raosaheb Deshmukh, J.

This appeal is directed against the judgment dated 13th July 1991 delivered by Shri R.B.Singh, First Additional Sessions Judge, Raigarh in Sessions Trial No.152/90 whereby the appellants were convicted under Section 302 read with Section 34 of the I.P.C. for committing murder of Bhukhiram in the intervening night of 19th / 20th July 1990 in village-Tengnapali, Police Station Sarangarh, District Raigarh and sentenced to undergo imprisonment for life.

2. Briefly stated the prosecution story is that the deceased was the father of the appellant Daulatram. The appellant-Maheshram is the son of Daulatram. Since mother of the appellant-Daulatram had expired, Bhukhiram was living alone in the house. Lakhan P.W.10, brother of the appellant, and his wife Dhwaja Bai P.W.3 used to lookafter the deceased. On 20.07.1990 when Dhwaja Bai P.W.3 went to the house, she saw that Bhukhiram was lying dead on the floor in a pool of

blood with injury on the head. On seeing this, she started shouting. The appellants reached there and saw the dead body of Bhukhiram. They also found that the papers relating to Bank deposits of Bhukhiram were lying scattered on the road.

3. Daulatram, appellant No.1, immediately went to Police Station Sarangarh and lodged F.I.R. vide Ex.P.25. Marg intimation vide Ex.P.26 was written at 7.45 A.M. Sub-Inspector Mukesh Khare reached the spot on the same day and prepared inquest memo vide Ex.P.3. The body of Bhukhiram was sent for post-mortem examination. Dr. J.N.Shukla P.W.11 found the following injuries:

> a) Three linear abrasions obliquely placed on the right side of neck in middle, just right to mid line, intermingling with each other and measuring 0.5 cm each.
>
> b) Linear abrasion obliquely placed on left middle neck skin going upto mid line 01 long.
>
> c) Abrasion over left neck, skin lateral anterior part below left angle of mandible oblique in area of 0.5 cm x 0.5 cm with clotted blood at one part seen.
>
> 4) Abrasion over right side neck anteriorly below right angle of mandible obliquely placed 01 cm. long.
>
> 5) One linear abrasion at right linear skin of neck above right clavicle obliquely placed 01 cm. long.
>
> 6) Lacerated wound centre of forehead 04 cm x 02 cm. x bony deep clotted blood present.
>
> 7) Lacerated wound oblique crossing mid line 04 cm x 02 cm x bony deep placed superior to injury no.6 with clotted blood present.
>
> 8) Oblique lacerated wound over left side of scalp parietal region going mid line 06 cm x 03 cm. x bony deep with clotted blood present.
>
> 9) Lacerated wound parietal left posteriorly oblique 02 cm x 02 cm x bony deep with clotted blood present.
>
> 10) Lacerated wound oblique left parietal region going

posteriorly over temporal area 02 cm x 02 cm x bony deep with clotted blood present.

11) Lacerated wound oblique going posteriorly 07 cm x 03 cm x bony deep. Thick clots of blood present around wound. Bony chips seen external to wound which was more or less obliquely anterio posteriorly placed .

Upon dissection, there was a depressed fracture of left temporal bone going upto the tempero parietal suture. Some of bony parts went inside the brain tissue. Membrane was congested left side below temporal and parietal area. Brain matter was injured on left temporal area and congested left temporal and parietal brain matter. In the opinion of Dr.J.N.Shukla P.W.11, mode of death was due to coma as a result of head injury. Nature of death was homicidal.

4. Two days after this investigation Sub-Inspector Mukesh Khare recorded the memorandum of the appellants Daulatram and Maheshram vide Ex.P.4 & P.5 and recovered one old black coloured half *pant* with blood like stains vide Ex.P.6 and one half *banian* of Hira Panna Company make with blood like stains vide Ex.P.7 from the appellant-Daulatram and one iron *Bindhana* and one old torn *lungi* with blood like stains from the appellant-Maheshram vide Ex.P.8. Bloodstained soil and plain soil, one cotton *Gamcha*, torch and one *Chaddi* were seized vide Ex.P.9 from the spot. One box made of tin and an old lock with key inside was seized from the spot vide Ex.P.10. The *dhoti* worn by deceased was also seized vide Ex.P.11. At the Sarangarh – Raigarh road at kilometer 50-60, one cotton *dhoti* having blood like stains, another cotton *dhoti*, one saree, one money bag, one national flag, one plastic folder of S.B.I.

and a torn sale deed which were scattered on the road were seized vide Ex.P.13. *Bindhana* and one terricot full shirt and *lungi* seized from the appellant-Mahesh and one black half *pant* and one half *banian* of Hira Panna make, bloodstained soil, plain soil and the articles seized from the spot were sent to Forensic Science Laboratory for examination. Presence of blood was confirmed on all the articles except plain soil vide Ex. P.30. The report of Serologist could not be obtained by the prosecution. After completion of investigation, the accused-appellants were prosecuted for offence under Section 302 read with Section 34 of the I.P.C. The appellant abjured the guilt, pleaded innocence and led no evidence in defence. The prosecution examined as many as 16 witnesses. The trial Judge relying upon the seizure of *Bindhana, lungi and banian* from appellant Mahesh, the seizure of one cotton half *pant* and half *banian* from appellant Daulatram, the report of the Forensic Science Laboratory confirming presence of blood on these articles recovered on the memorandum of the appellants, the opinion of Dr. J.N.Shukla P.W.11 relating to the weapon of offence seized from appellant-Mahesh and the evidence of motive for the appellants to commit murder of Bhukhiram convicted the appellants under Section 302 read with Section 34 of the I.P.C. and sentenced them as aforesaid.

5. Learned counsel for the appellants has argued that there is no legal or reliable evidence on record to bring home the guilt of the appellants under Section 302/34 of I.P.C. beyond the shadow of doubt. The certificate of the S.B.I. Sarangarh Ex.P.23 also showed that Bhukhiram had only Rs.1006.80 Ps.

in balance of his savings account. The medical evidence of Dr. Shukla P.W.11 in paragraph 10 clearly ruled out the possibility that lacerated wounds sustained by Bhukhiram could be caused by the *Bindhana* article 'A' which was seized from the appellant-Mahesh. It was also contended that no opinion of Serologist was placed on record to show that the stains on the articles seized at the instance of the appellants were human blood. Reliance was placed on *State of M.P. v. Kriparam* reported in **(2003) 12 Supreme Court Cases 675**. It was thus argued that the circumstantial evidence led by the prosecution did not exclude the hypothesis of innocence of the accused appellants and was also wholly inconsistent with the hypothesis of the guilt of the appellant. On the other hand, learned counsel for the State has argued in support of the judgment of the trial Court.

6. We have heard the rival contentions. We have also perused the record. The case for the prosecution rests solely on circumstantial evidence. The circumstances relied on by the prosecution for bringing home the guilt of the appellants are as under:

a) the recovery of one iron *Bindhana*, article 'A' and one *lungi* with bloodlike stains from appellant Maheshram vide Ex.P.8;

b) the recovery of one old black coloured half pant vide Ex.P.6 and one half *banian* of Hira Panna make with bloodlike stains vide Ex.P.7 from appellant Daulatram; and

c) motive for the appellants to commit the murder of Bhukhiram.

7. The law relating to appreciation of circumstantial evidence is well settled. In *Dhananjoy Chatterjee v. State of West Bengal* reported in **(1994) 2 SCC** 220, the Apex Court has laid down the law relating to appreciation of circumstantial evidence as under:

> "In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof."

8. Applying the test laid down by the Hon'ble Apex Court, we have scanned the evidence led by the prosecution. So far as the evidence relating to motive for the appellants to cause the death of Bhukhiram is concerned, the testimony of Dhwaja Bai P.W.3 and Deriha P.W.2 only shows that the appellant Daulatram was not on talking terms with his father. Puniram P.W.1 has deposed that the relations between the appellant Daulatram and Bhukhiram were normal but they did not speak to each other. So far as the appellants having an eye over the cash or jewellery possessed by Bhukhiram is concerned, although Lakhan P.W.10 has stated that Bhukhiram was possessed of some ornaments, there is absolutely no evidence on record which would show that some

jewellery possessed by Bhukhiram had been stolen or was recovered from the appellants. The certificate of State Bank of India Ex.P.23 also shows that Bhukhiram had a very meager sum of Rs.1006.80 Ps. in his account which rules out the motive for murder on this count. Lakhan P.W.10 has further deposed that he does not know about any money dispute between the appellants and Bhukhiram. The mere fact that the appellant Daulatram and Bhukhiram were not on talking terms does not establish motive for Daulatram to commit murder of his father. So far as the appellant-Mahesh is concerned, there is not even an iota of evidence to show that he had any motive to kill his grand-father Bhukhiram. Thus, there is no cogent or reliable evidence on record which would go to show that the appellants had the motive for committing murder of Bhukhiram.

9. So far as the recovery of *Bindhana* article 'A' and one terricot full shirt and one torn *lungi* from appellant Mahesh Ram vide Ex.P.8 and the recovery of one black half *pant* and one half *banian* of Hira Panna make vide Exs.P.6 & 7 from appellant-Daulatram is concerned, investigating officer Sub-Inspector Mukesh Khare P.W.16 has not stated as to upon what information did he record the memorandum of the appellants and made the recoveries. Mukesh Khare P.W.16 was camping in village Tengnapali since 20th July 1990 upon a prompt F.I.R. lodged by the appellant Daulatram. He has not stated that during investigation he had collected some material which pointed the needle of suspicion towards the appellants.

10. The prosecution has led evidence of Nanhuram P.W.5

and Eeswar P.W.8 who corroborate the testimony of Sub-Inspector Mukesh Khare P.W.16 relating to recovery of the above mentioned articles from the appellants. So far as the recovery of iron *Bindhana*, terricot full shit and torn *lungi* from appellant Mahesh and a black half pant and cotton half *banian* seized from the appellant Daulatram vide Ex.P.6 & P.7 is concerned, Sub-Inspector Mukesh Khare P.W.16 has in his testimony not stated that he had sealed these articles immediately after effecting their seizure vide Ex.P.6 & P.7. The report of Dr. J.N.Shukla given vide Ex.P.16 also does not show that he had received the iron *Bindhana* for examination in a sealed condition from Police Station Sarangarh. The report of F.S.L. Ex.P.30 shows that the iron *Bindhana*, one terricot full shirt, one torn *lungi* seized from the appellant-Mahesh and black half pant and half *banian* of Hira Panna make seized from appellant Daulatram were sent to the Forensic Science Laboratory vide letter dated 1.8.1990 meaning thereby that these articles were lying in an open condition with the Police for almost a week. The possibility that bloodlike stains could have been implanted during this period on these articles cannot therefore be ruled out. In the absence of evidence that the above mentioned articles seized from the appellants were sealed immediately after their seizure and sent in a sealed condition to the Doctor for examination, the presence of blood confirmed by the F.S.L. vide Ex.P.30 on the above mentioned articles is of no consequence.

11. In this case, the prosecution has failed to produce the report of the Serologist. It is, therefore, not a case in which the

Serologist has after examination of the bloodstains expressed his opinion that their origin could not be determined since the bloodstains had disintegrated. In the absence of the report of the Serologist, the report of Forensic Science Laboratory therefore does not take the prosecution in further. In *State of M.P. v. Kriparam* reported in **(2003) 12 Supreme Court Cases 675** the Apex Court has held that in absence of the report of the Serologist as to the origin of blood found on the crime weapon and clothes of the accused would be of no assistance to the prosecution.

12. Thus, the prosecution has failed to establish that human blood was present over the articles seized from the appellants on 22.7.1980 vide Ex.P.6, 7 and 8. What is surprising is the absence of any material in the testimony of Sub-Inspector Mukesh Khare P.W.16 which would go to show that there was suspicion that the report lodged by Daulatram was false. Sub-Inspector Mukesh Khare was camping in village Tengnapali from 20.07.1990. F.I.R. had already been lodged promptly by the appellant-Daulatram at 7.35 A.M. 20.07.90. Sub-Inspector Mukesh Khare P.W.16 had gone to the spot on 20.07.90, prepared the inquest memo and had also sent the body of Bhukhiram for post-mortem examination. There is nothing on record to show as to how the needle of suspicion suddenly revolved around the appellants-Daulatram and his son Mahesh. The testimony of Dr. J.N.Shukla in paragraph 10 clearly shows that he had opined that the lacerated injuries sustained by Bhukhiram could not have been caused by the sharp portion of the *Bindhana*, article 'A'. In the next breath,

he has reiterated that the injuries sustained by Bhukhiram could not have been caused by *Bindhana*, article 'A'.

13. Having thus considered the evidence led by the prosecution in its entirety we find that the circumstantial evidence is not wholly inconsistent with the hypothesis of the innocence of the appellants. The chain of circumstances considered in its entirety does not lead only to the hypothesis of guilt of the appellants. In the above mentioned circumstances, in our considered opinion, the appellants are entitled to benefit of doubt.

14. In the result, the appeal is allowed. Conviction of the appellants under Section 302 read with Section 34 of the I.P.C. and the sentences awarded thereunder are set aside. The appellants are acquitted under Section 302/34 of the I.P.C. after giving the appellants the benefit of doubt. Bail bonds of the appellants are cancelled and their sureties are also discharged.

Sd/-
Fakhruddin
Judge

Sd/-
Dilip Raosaheb Deshmukh
Judge

Anjani